



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Housing and Community Development
VAC Chapter Number:	13 VAC 5-31-10 et seq.
Regulation Title:	Virginia Amusement Device Regulations
Action Title:	Proposed
Date:	9/25/02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The substantive amendments to this regulation proposed by the Board are as follows:

To clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia.

To update the incorporated by reference standards to the latest editions of the American National Standards Institute (ANSI) for the regulation of passenger tramways and the American Society for Testing and Materials (ASTM) for the regulation of amusement devices.

To now regulate "go-karts" by the adoption of the new referenced standards.

To limit the permit fee charged by the local building department to operate an amusement device to a "maximum of \$150 for one site" when the inspection for obtaining a certificate of inspection for that device is conducted by a private inspector

To allow appeals to the State Building Code Technical Review Board following a final determination by the local board of building code appeals.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

There is no federal source of legal authority to promulgate the regulation.

The statutory authority for the Board of Housing and Community Development to promulgate the regulations is found in the General Assembly's mandate to the Board in § 36-98.3 of the Code of Virginia, which gives the Board the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices.

§ 36-98.3. Amusement devices.

A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. Amusement device means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:

1. The issuance of certificates of inspection prior to the operation of an amusement device;
2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;
3. Maintenance inspections of existing amusement devices;
4. Reporting of accidents resulting in serious injury or death;
5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;
6. Certification of amusement device inspectors;
7. Qualifications of amusement device operators;
8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and
9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.

B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.

C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members

who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 7 of § 36-137 as competent to inspect amusement devices. The provisions of § 36-105 notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.

E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices.

(1986, c. 427; 1991, c. 152.)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+36-98.3>

The Office of the Attorney General has certified that the Board of Housing and Community Development has the statutory authority to promulgate the proposed amendments.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The rationale for the substantive changes to this regulation being proposed by the Board is as follows:

To clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia.

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Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The key provisions of the regulation that changes the current status of law, are as follows:

To clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia.

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Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage for the public of implementing the new regulation should be less burdensome and intrusive. The agency sees no disadvantages for the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The minimum included identity of anticipated fiscal impacts for the proposed regulation as are being proposed are as follows:

- (a) The projected cost increase to the state to implement and enforce the proposed regulation is zero.
- (i) The fund source / fund detail is not applicable.
 - (ii) The budget activity with a cross-reference to program and subprogram is not applicable.
 - (iii) The delineation of one-time versus on-going expenditures is not applicable.
- (b) The projected cost of the regulation on localities may be zero.
- (c) A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.
- (d) The agency's best estimate of the number of such entities that will be affected is unknown.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

All of the substantive changes to this regulation being proposed by the Board are the following:

To clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia.

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Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

During the proposed adoption phase of this regulatory action the Board of Housing and Community Development (Board) asks various groups to review the provisions of this regulation and offer comments and suggestions for specific alternatives.

The Board decided to adopt as proposed regulations, most of the suggestions submitted to the Board for improvement, in order to provide a public review of the format, arrangement and the amendments. The rationale of this procedure forms the basis of the process used by the Board to select the least burdensome and intrusive alternatives that meets the essential purpose of this regulatory action.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no public comment during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Based on the Board's thorough examination of this regulation and relevant public comments received on the draft proposed regulation, the Board has determined that the proposed regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. Such a review will take place no later than three years after the final regulation becomes effective. And the specific and measurable regulatory goals will be:

1. A regulation that represents the least burdensome or intrusive alternative that meets the essential purpose required of that regulation, and
2. A regulation that is clearly written and easily understandable by the individuals and entities affected.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

N/A